

### **Remarks/Arguments**

In the Non-Final Office Action dated March 29, 2010, it is noted that claims 1-3 and 5-29 are pending in this application; that the allowability of claims 1, 14 and 23 has been withdrawn; that objection has been raised with respect to claims 11-12 and 25; that claims 16-17 and 19 stand rejected under 35 U.S.C. §112, second paragraph; and that claims 1-3 and 5-29 stand rejected under 35 U.S.C. §103.

By this response, claims 11-13, 16-17, 19 and 25 have been amended to correct minor antecedent and/or dependency issues identified in the Office Action. The amendments are believed to be supported at least by the original claim set as well as by the original specification. No new matter has been added to these claims.

### ***Objection to the Claims***

Objection has been raised with respect to claims 11-12 and 25. In view of the amendments to the claims, the grounds of objection are believed to have been obviated.

Claim 11 has been amended to call for “the user” and “the video message” because the antecedents of these terms have already been initially recited in base independent claim 1.

Claims 12 and 13 have each been amended back to their respective original form as being dependent from claim 11. This amendment avoids any duplication with claims 10 and 25, respectively.

Claim 25 has been amended to insert the word “comprising” as suggested in the Office Action.

The amendments are believed to be proper and justified and supported at least by the original claim set as well as by the original specification. No new matter has been added to these claims. In view of the amendments to the claims and the remarks above, it is submitted that the objections to claims 11-12 and 25 have hereby been obviated. Withdrawal of the objections is respectfully requested.

### ***Rejection of Claims 16-17 and 19 under 35 U.S.C. §112***

Claims 16-17 and 19 stand rejected under 35 U.S.C. §112, second paragraph, as being indefinite. In view of the amendments to these claims, the rejection is respectfully traversed.

Claims 16-17 and 19 have been amended to recite “said video display” instead of “said display device”. These claims all depend from independent base claim 1, which recites, in part “a video display”. Thus, the amendments to the claims conform the amended terms properly to their antecedent from claim 1. No new matter has been added, and the amendments are believed to be proper and justified.

In view of the amendments to the claims and the remarks above, it is submitted that claims 16-17 and 19 are clear and definite, and thus, allowable under 35 U.S.C. §112. Withdrawal of this rejection is respectfully requested.

### *Cited Art*

The following list of references has been cited and applied against the claims in the present Office Action:

- U.S. Patent 6,980,236 to Kojima et al. (hereinafter referenced as “*Kojima*”);
- U.S. Patent Application Publication No. 2002/0118950 to Molinet, III (hereinafter referenced as “*Molinet*”);
- U.S. Patent Application Publication No. 2003/0012559 to Kusaka et al. (hereinafter referenced as “*Kusaka*”);
- U.S. Patent 6,351,813 to Mooney et al. (hereinafter referenced as “*Mooney*”);
- U.S. Patent 6,247,052 to Huang et al. (hereinafter referenced as “*Huang*”);
- U.S. Patent Application Publication No. 2001/0017977 to Umeda (hereinafter referenced as “*Umeda*”);
- U.S. Patent Application Publication No. 2002/0087649 to Horvitz (hereinafter referenced as “*Horvitz*”);
- U.S. Patent 4,523,226 to Lipton et al. (hereinafter referenced as “*Lipton*”);
- Japanese Patent Application Laid-Open No. JP 10-240904 to Nishimoto et al. (hereinafter referenced as “*Nishimoto*”);
- U.S. Patent 7,234,117 to Zaner et al. (hereinafter referenced as “*Zaner*”);
- U.S. Patent 6,375,568 to Roffman et al. (hereinafter referenced as “*Roffman*”);
- U.S. Patent 5,410,326 to Goldstein et al. (hereinafter referenced as “*Goldstein*”);
- U.S. Patent 5,875,298 to Harigaya et al. (hereinafter referenced as “*Harigaya*”); and
- Assorted claims of Official Notice.

### *Claims of Official Notice in the 35 U.S.C. §103 Rejections*

The following remarks pertaining to the taking of Official Notice are presented here in a consolidated form instead of repeating the remarks different times to address each instance where Official Notice was taken to cure defects in the teachings of actual references. These remarks

should be understood to apply in each instance below where Official Notice has been taken for an obviousness rejection.

In the present Office Action, Official Notice has been claimed for various reasons with respect to the rejections of claims 18, 21-23 and 27-29 under 35 U.S.C. §103. The present Office Action moves outside the applied references for support of the rejections and resorts to Official Notice via case law in order to sustain the rejection of these claimed limitations.

Official Notice in each and every instance in the present Office Action is wholly unsupported by documentary evidence of any kind. According to M.P.E.P. §2144.03(A),

*“Official notice unsupported by documentary evidence should only be taken by the examiner where the facts asserted to be well-known, or to be common knowledge in the art are capable of instant and unquestionable demonstration as being well-known.”*

Applicants hereby traverse the taking of Official Notice. It is respectfully submitted that the Official Notice herein is made in error because the facts relied upon are believed to be not well-known and not capable of instant and unquestionable demonstration as being well-known. Furthermore, Applicants request that each instance of Official Notice in this matter be supported by a proffer of documentary evidence.

In the event that the USPTO is unable to make a proffer of such documentary evidence, it is then submitted that the present Office Action fails to state *prima facie* cases obviousness under 35 U.S.C. §103 with respect to claims 18, 21-23 and 27-29. Complete remarks about the rejections are presented in the paragraphs immediately below. In turn, withdrawal of the rejection in those cases is respectfully requested.

***Rejection of Claims 1-13, 15-22, and 24-29 under 35 U.S.C. §103***

Claims 1-2, 5-9, 18, 21-22, 24 and 27-29 stand rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet. With respect to claims 18, 21-22 and 27-29, it has been noted above that the rejections have been supplemented by the taking of Official Notice for certain aspects of the claimed limitations. Claim 3 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Kusaka. Claims 10 and 12 stand rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Mooney.

Claim 11 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Huang. Claims 13 and 25-26 stand rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Umeda. Claim 15 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Lipton. Claim 16 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Nishimoto. Claim 17 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Zaner. Claim 19 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Roffman. Claim 23 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Molinet and Goldstein, also supplemented by the use of Official Notice. These rejections are all respectfully traversed.

Claim 1 is an independent apparatus claim. Claims 2, 5-9, 18, 21-22, 24 and 27-29 depend ultimately from claim 1. The dependent claims include all the limitations of base independent claim 1, while also introducing additional features over those in claim 1.

Claim 1 recites, in part:

*"A video message system, comprising:  
a video display, having a fixed position, for playing back a  
video portion of a video message from a user;  
...  
at least one video camera disposed on said frame, and oriented  
in a same direction as said video display, for capturing video data  
of the user for inclusion in the video portion of the video message;  
wherein said video display is further for displaying information  
corresponding to at least one of the recording and the playing  
back of the video message."*

Neither Kojima nor Molinet teach the limitations in claim 1 as reproduced above.

Kojima appears to teach a personal computer with a button activated image capturing function. *See Kojima's Abstract*. The image capture is performed in its own separate image capture application, which is activated by pushing a shutter button or switch. *See Kojima at Figures 9-12 and the specification related thereto*. The initial switch push action – called a “half push” by Kojima – also allows the still image to be captured at least temporarily in the application window on the display screen. *Ibid*. When the shutter button or switch is fully pushed, the still image is captured and stored on a hard disc drive. *Ibid*. Although Kojima

focuses on the still image pickup operation, it should be noted that Kojima also appears to disclose briefly an ability to capture motion images. *See Kojima at col. 6, lines 9-22.*

At page 4 of the Office Action, the USPTO admits that “Kojima ... fails to disclose wherein said video display is further for displaying information corresponding to at least one of the recording and the playing back of the video message.” Apparently in order to cure this defect in Kojima’s teachings, Molinet has been combined with Kojima. Molinet’s teachings have not been applied to any other limitation in claim 1.

Molinet appears to teach a technique for use in DVD players for tricking the DVD elapsed time display to display a time of recording other than the actual elapsed time of the recorded material on the DVD itself. *See Molinet at paragraphs [0013] and [0030]-[0033].* Molinet appears to teach the use of images, either motion or still, already recorded to DVD for standard DVD viewing. Molinet’s teachings have not been applied to any other limitation in claim 1.

The limitations in claim 1 are defined in terms of a video message. Neither Molinet nor Kojima teach, show, or suggest “*playing back a video portion of a video message from a user*”, or “*capturing video data of the user for inclusion in the video portion of the video message*”, or “*displaying information corresponding to at least one of the recording and the playing back of the video message*”, as defined in the claims. Each of these limitations is clearly directed to the video portion of the video message.

Kojima does not teach, show, or suggest any use or functionality involving the captured images in a message of any kind, let alone a video message as defined in the claims. Molinet is strictly directed to the production of a time of day for DVD video, when played in a DVD player. So Molinet does not teach, show, or suggest any use or functionality involving the video in a message of any kind such as a video message as defined in the claims. Thus, neither Kojima nor Molinet teach or suggest the elements of the claims since each element reproduced above involves a functionality dependent on the “*video portion of the video message*” and “*information corresponding to at least one of the recording and the playing back of the video message*”.

Kojima does not teach a video display having a fixed position, as defined in claim 1. Kojima appears to be directed to a portable PC such as a laptop or netbook including “a body 2 and a display part 3” connected together. *See Kojima at col. 2, lines 16-17 and at least Figures 1*

and 4. Instead of being fixed as required by the present claims, Kojima's display part is "attached swingingly to the body 2". *Ibid.* Figures 1, 3, and 4 show the display part swung into a number of different positions with respect to the body, wherein the positions range from completely shut (i.e., 0° separation between display and body to completely open (i.e., 180° separation between display and body). Kojima's display is not even remotely suggestive of "*a video display, having a fixed position*". In this regard, it should be noted that Molinet lacks any suggestion of a video display at all, since Molinet's sole focus appears to be the capability of presenting time information on the numeric display of a DVD player. Molinet's numeric display on the DVD player is not a video display of any kind. Thus, neither Kojima nor Molinet teach or suggest the limitations of claim 1 for "*a video display, having a fixed position*".

Each of claims 2, 5-9, 18, 21-22, 24 and 27-29 depends directly or indirectly from claim 1. Thus, these claims include all the limitations already discussed above for claim 1. The limitations for claim 1 have been patentably distinguished from Kojima and Molinet. For all these reasons, it is submitted that claims 2, 5-9, 18, 21-22, 24 and 27-29 are not obvious in view of Kojima and Molinet.

The alleged teachings of Molinet and Kojima form the basis for each rejection of dependent claims 2, 5-9, 18, 21-22, 24 and 27-29, and are further supplemented by unsubstantiated Official Notice and/or teachings from Kusaka, Mooney, Huang, Umeda, Lipton, Nishimoto, Zaner, Roffman and Goldstein. Whether with respect to Official Notice or with respect to all nine additional references listed above, there is no showing that these references cure the defects in the teachings of Molinet and Kojima as described in detail above. This is still the case even if it is assumed, for the sake of argument, that these nine additional references teach or suggest those features suggested by the Examiner in the present Office Action – an assumption with which Applicants neither acquiesce nor agree. For all the reasons above, the combination of Kojima and Molinet with any of Kusaka, Mooney, Huang, Umeda, Lipton, Nishimoto, Zaner, Roffman and Goldstein fails to teach, show, or suggest all the limitations of the independent claim 1 and the claims dependent thereon.

In light of all the remarks above, it is submitted that claims 1-2, 5-9, 18, 21-22, 24 and 27-29 would not have been obvious to one skilled in the art upon a reading of Kojima, Molinet, Kusaka, Mooney, Huang, Umeda, Lipton, Nishimoto, Zaner, Roffman, and Goldstein, whether

taken separately or in combination. Thus, claims 1-2, 5-9, 18, 21-22, 24 and 27-29 are allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

***Rejection of Claim 14 under 35 U.S.C. §103***

Independent claim 14 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Huang and Horvitz. This rejection is respectfully traversed.

Claim 14 includes at least the limitations of "*a video display, having a fixed position, for playing back a video portion of a video message from a user ... at least one video camera disposed on said frame, and oriented in a same direction as said video display, for capturing video data of the user for inclusion in the video portion of the video message.*" These limitations have already been patentably distinguished from Kojima. As noted above, the combination of Huang with Kojima does not cure the defects in the teachings of Kojima with respect to the limitations in claim 1. Thus, the remarks presented above with respect to claim 1 and these references are also applicable to claim 14.

Even if it is assumed, for the sake of argument, that Huang and Horvitz teach or suggest those features suggested in the present Office Action – an assumption with which Applicants neither acquiesce nor agree, it is submitted that these references still fail to cure the defects described above for the teachings of Kojima. For all the reasons above, the combination of Kojima, Huang, and Horvitz fails to teach, show, or suggest all the limitations of claim 14 that are substantially similar to the limitations described above for claim 1.

In light of all the remarks above and in view of the similarity of the limitations in claims 1 and 14, it is submitted that claim 14 would not have been obvious to one skilled in the art upon a reading of Kojima, Huang, and Horvitz, whether taken separately or in combination. Thus, claim 14 is allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

***Rejection of Claim 23 under 35 U.S.C. §103***

Independent claim 23 stands rejected under 35 U.S.C. §103 as being unpatentable over Kojima in view of Harigaya and Official Notice. This rejection is respectfully traversed.

Claim 23 includes at least the limitations of "*a video display, having a fixed position, for playing back a video portion of a video message from a user ... at least one video camera disposed on said frame, and oriented in a same direction as said video display, for capturing video data of the user for inclusion in the video portion of the video message,*" which have already been patentably distinguished from Kojima. The remarks presented above with respect to claim 1 and Kojima are also applicable to claim 23.

Even if it is assumed, for the sake of argument, that Harigaya and the Official Notice teach or suggest those features suggested in the present Office Action – an assumption with which Applicants neither acquiesce nor agree, it is submitted that Harigaya still fails to cure the defects described above for the teachings of Kojima. For all the reasons above, the combination of Kojima, Hariyaga, and the Official Notice fails to teach, show, or suggest all the limitations of claim 23 that are substantially similar to the limitations described above for claim 1.

In light of all the remarks above and in view of the similarity of the limitations in claims 1 and 23, it is submitted that claim 23 would not have been obvious to one skilled in the art upon a reading of Kojima, Hariyaga, and the Official Notice, whether taken separately or in combination. Thus, claim 23 is allowable under 35 U.S.C. §103. Withdrawal of this rejection is respectfully requested.

### ***Conclusion***

In view of the foregoing, it is respectfully submitted that all the claims pending in this patent application are in condition for allowance. Entry of this amendment, reconsideration of this application, and allowance of all the claims are respectfully solicited.

Respectfully submitted,

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